



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2012-0587; FRL-9732-9]

Revisions to the California State Implementation Plan, San Diego
APCD, Northern Sierra AQMD, and Sacramento Metropolitan AQMD

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Diego Air Pollution Control District (SDAPCD), Northern Sierra Air Quality Management District (NSAQMD), and Sacramento Metropolitan Air Quality Management District (SMAQMD) portions of the California State Implementation Plan (SIP).

These revisions concern volatile organic compound (VOC) emissions from the transfer of gasoline at gasoline dispensing facilities. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective on [Insert date 60 days from the date of publication in the Federal Register] without further notice, unless EPA receives adverse comments by [Insert date 30 days from the date of publication in the Federal Register]. If we receive such comments, we will publish a timely withdrawal in

the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2012-0587, by one of the following methods:

1. Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.
2. E-mail: steckel.andrew@epa.gov.
3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail.

www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your

comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California.

While all documents in the docket are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947-4126, law.nicole@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to EPA.

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I. The State's Submittal

- A. *What rules did the State submit?*

Table 1 lists the rules we are approving with the dates that they were amended by the local air agencies and submitted by the California Air Resources Board.

Table 1 - Submitted Rules

Local Agency	Rule #	Rule Title	Amended	Submitted
SDAPCD	61.4	Transfer of Volatile Organic Compounds into Vehicle Fuel Tanks	03/26/08	07/18/08
NSAQMD	214	Phase I Vapor Recovery Requirements	04/25/11	09/27/11
SMAQMD	448	Gasoline Transfer into Stationary Storage	02/26/09	04/05/11

Local Agency	Rule #	Rule Title	Amended	Submitted
SMAQMD	449	Containers Transfer of Gasoline into Vehicle Fuel Tanks	02/26/09	04/05/11

On August 22, 2008, October 24, 2011, and May 6, 2011, EPA determined that the submittal for SDAPCD Rule 61.4, NSAQMD Rule 214, and SMAQMD Rules 448 and 449 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

There is no previous version of NSAQMD Rule 214 in the SIP, although the NSAQMD adopted earlier versions of these rules on March 27, 2007 and February 22, 2010, and CARB submitted them to us on March 7, 2008 and July 20, 2010. We approved an earlier version of SDAPCD Rule 61.4 into the SIP on May 13, 1993 (58 FR 28354). The SDAPCD adopted revisions to the SIP-approved version of SDAPCD Rule 61.4 on March 26, 2008 and CARB submitted them to us on July 18, 2008. We also approved earlier versions of SMAQMD Rule 448 into the SIP on January 23, 1996 (61 FR 1716) and SMAQMD Rule 449 into the SIP on March 24, 2003 (68 FR 14156). The SMAQMD adopted revisions to the SIP-approved versions of the two rules on February 26, 2009 and CARB submitted them to us on April

5, 2011. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What is the purpose of the submitted rules or rule revisions?

Volatile organic compounds (VOCs) help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. The revisions to the gasoline transfer rules incorporate an exemption when widespread onboard refueling vapor recovery system is in use and update several standards to match what is required by the California Air Resources Board regarding certification, testing, monitoring, and recordkeeping. EPA's technical support document (TSD) has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and (b)(2)), and must not relax existing requirements (see sections 110(l) and

193). The SDAPCD, NSAQMD, and SMAQMD regulate ozone nonattainment areas (see 40 CFR part 81), so NSAQMD Rule 214, SMAQMD Rule 448, and SMAQMD Rule 449 must fulfill RACT. However, because SDAPCD was classified on May 14, 2012 (77 FR 28424), RACT SIP requirements for the district do not come into effect until one year after the effective date of the classification and do not currently apply to SDAPCD Rule 61.4.

Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
3. "Design Criteria for Stage I Vapor Control Systems Gasoline Service Stations" (EPA-450/R-75-102-1975/11) November 1975.
4. "Gasoline Vapor Recovery Guidelines", EPA Region IX, April 24, 2000.
5. "Technical Guidance- Stage II vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities." (EPA-450/3-91-022a) November 1991.
6. "EPA's Draft Model Rule, Gasoline Dispensing Facility -

Stage II Vapor Recovery," August 17, 1992.

B. Do the rules meet the evaluation criteria?

We believe NSAQMD Rule 214, SMAQMD Rule 448, and SMAQMD Rule 449 are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. While SDAPCD Rule 61.4 does not meet RACT requirements, it is consistent with the relevant policy, guidance regarding enforceability, and SIP relaxations. The TSD has more information on our evaluation.

C. EPA recommendations to further improve the rules.

The TSD describes additional rule revisions that we recommend for the next time the local agencies modify the rules.

D. Public comment and final action.

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by [Insert date 30 days from date of publication in the Federal Register], we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final

action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on [Insert date 60 days from date of publication in the Federal Register]. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under the Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. §7410(k); 40 CFR §52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible

methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of

Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 5, 2012

Jared Blumenfeld,
Regional Administrator,
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

1. The authority citation for Part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 et seq.

Subpart F - California

2. Section 52.220, is amended by adding paragraphs (c) (359) (i) (F), (388) (i) (D) (4) and (5) and (404) (i) (B) (2) to read as follows:

§52.220 Identification of plan.

* * * * *

(c) * * *

(359) * * *

(i) * * *

(F) San Diego County Air Pollution Control District.

(1) Rule 61.4, "Transfer of Volatile Organic Compounds into Vehicle Fuel Tanks," revised on March 26, 2008.

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(388) * * *

(i) * * *

(D) * * *

(4) Rule 448, "Gasoline Transfer into Stationary Storage Containers," amended on February 26, 2009.

(5) Rule 449, "Transfer of Gasoline into Vehicle Fuel Tanks," amended on February 26, 2009.

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(404) * * *

(i) * * *

(B) * * *

(2) Rule 214, "Phase I Vapor Recovery Requirements," amended on April 25, 2011.

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[FR Doc. 2012-31636 Filed 01/04/2013 at 8:45 am; Publication Date: 01/07/2013]